

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATILDE GATTONI,

Plaintiff,

- against -

MICROSOFT CORPORATION

Defendant.

Docket No. 1:18-cv-8884

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matilde Gattoni (“Gattoni” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Microsoft Corporation, (“Microsoft” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of twelve copyrighted photographs of the effects of climate change in West Africa, owned and registered by Gattoni, a professional photographer. Accordingly, Gattoni seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Gattoni is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at Via Sandro Botticelli, 22 20133, Milan, Italy.

6. Upon information and belief, Microsoft is a foreign business corporation duly organized and existing under the laws of the State of Washington, with a place of business 11 Times Square, New York, NY 10036. Upon information and belief Microsoft is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Microsoft has owned and operated a website at the URL: www.msn.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Gattoni photographed the effects of climate change in West Africa (the “Photographs”). True and correct copies of the Photographs is attached hereto as Exhibit A.

8. Gattoni is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs was registered with the United States Copyright Office and was given registration number VA 2-022-336 and the photographs were titled “008 BN5B8187.jpg” “038 BN5B8132.jpg,” “041 BN5B9232.jpg,” “059 BN5B8750.jpg,” “016 BN5B8103.jpg,” “017 BN5B8906.jpg,” “018 BN5B8168.jpg,” “026 BN5B7756.jpg,” “027 BN5B9775.jpg,” “029 BN5B8917.jpg,” “032 BN5B1184.jpg,” and “034 BN5B9167.jpg.” See Exhibit B.

B. Defendant’s Infringing Activities

10. Microsoft ran an article on the Website titled *El Mar se traga la costa de Africa Occidental*. See URL <http://www.msn.com/es-ve/noticias/otras/la-rabia-del-oceano/ar-AAklO8E#image=7>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

11. Microsoft did not license the Photographs from Plaintiff for its article, nor did Microsoft have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Microsoft infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Microsoft is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Microsoft be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 27, 2018

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